

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROBERT MOELLER
3337 S. 76th Street
Apartment 7
Milwaukee, WI 53219,

Plaintiff,

and

AMERICAN FAMILY MUTUAL INSURANCE
COMPANY, S.I.
c/o Corporation Service Company
8040 Excelsior Drive, Ste 400
Madison, WI 53717, and

UNITED HEALTHCARE INSURANCE COMPANY
For AARP Medicare Complete
c/o CT Corporation System
301 S. Bedford Street, Suite 1
Madison, WI 53703,

Involuntary Plaintiffs,

vs.

UNITED STATES OF AMERICA
United States of America
US Attorney's Office
517 E. Wisconsin Avenue
Suite 530
Milwaukee, WI 53202

Defendants.

COMPLAINT

NOW COMES the Plaintiff, Robert Moeller, by his attorneys, Gendlin, Liverman & Rymer, S.C., by Attorney Timothy J. Rymer, as and for his cause of action alleges and shows to the Court as follows:

PARTIES

1. Plaintiff, Robert Moeller, is an adult individual residing at 3337 S. 76th Street, Apartment 7, in the City and County of Milwaukee, State of Wisconsin 53219.

2. Involuntary Plaintiff, American Family Mutual Insurance Company, S.I., is a Wisconsin Corporation, whose Registered Agent is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717, and is a corporation which provides policies of automobile insurance coverage including medical payments coverage, which may have paid medical related expenses on behalf of Plaintiff, Robert Moeller, for injuries he sustained in this incident; and that as a result of said payments, American Family Mutual Insurance Company, S.I., may have a subrogated and/or reimbursement interest herein to the extent of its payments, however, subject to the net made whole rule governing subrogation and reimbursement in Wisconsin. By reason of such payments, American Family Mutual Insurance Company, S.I., is a proper party hereto. If American Family Mutual Insurance Company, S.I., fails to timely and properly Answer and enter an appearance in this action, then the court should find that American Family Mutual Insurance Company, S.I., has waived any right to participate in this matter and has waived any right to assert a reimbursement and/or subrogation claim. Further, if American Family Mutual Insurance Company, S.I., fails to participate in the prosecution of this action as provided by Wisconsin law, then any alleged right it may have shall be extinguished.

3. Involuntary Plaintiff, United Healthcare Insurance Company, is a Connecticut Corporation whose Registered Agent is CT Corporation System, 301 S. Bedford Street, Suite 1, Madison, Wisconsin 53703, and is a corporation which provides group health coverage to persons, one of whom is Plaintiff, Robert Moeller, for health benefits for a fee; and that United Healthcare Insurance Company, has paid medical bills for and on behalf of Plaintiff, Robert

Moeller for the he sustained in this incident; and that as a result of said payments, United Healthcare Insurance Company, may have a subrogated and/or reimbursement interest herein to the extent of its payments, however, subject to the net made whole rule governing subrogation and reimbursement in Wisconsin. By reason of such payments, United Healthcare Insurance Company, is a proper party hereto. If United Healthcare Insurance Company, fails to timely and properly Answer and enter an appearance in this action, then the court should find that United Healthcare Insurance Company, has waived any right to participate in this matter and has waived any right to assert a reimbursement and/or subrogation claim. Further, if United Healthcare Insurance Company, fails to participate in the prosecution of this action as provided by Wisconsin law, then any alleged right it may have shall be extinguished.

4. Defendant, United State of America, is a sovereign nation, against whom claims are brought arising out of the negligent acts of any employee of the government and its agencies including the United States Postal Service, while acting within the scope of his/her employment as governed by the Federal Tort Claims Act as set forth in 28 USC §§1346(b), 2671 through 2680.

JURISDICTION AND VENUE

5. This is a case involving the Federal Tort Claims Act with a Federal Agency, a domestic insurance company, a foreign health insurance company and a Wisconsin resident, as more fully plead below. As such, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C., §§ 1346(b), §§ 2201, 2202 and 2671-2680. All administrative remedies available to the plaintiff have been exhausted.

6. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1401(b) as this tortuous act occurred within this District and the action concerns parties residing in or doing business in the Eastern District of Wisconsin.

COMPLIANCE WITH ADMINISTRATIVE CLAIM REQUIREMENT

7. That on April 24, 2017, Plaintiff, Robert Moeller, formally notified the United States Postal Service, of a claim for personal injuries.

8. That on March 20, 2018, Robert Moeller presented to the United States Postal Service, a claim for personal injuries on Standard Form 95 in the amount of \$70,000.00 (Seventy Thousand) Dollars.

9. That on September 17, 2018, The United States Postal Service served, through their attorneys, a Notice of Disallowance of Claim.

FACTUAL ALLIGATIONS

10. On or about April 6, 2017, Plaintiff, Robert Moeller, was a pedestrian, walking northbound, with a walk sign, across West Howard Avenue, in the marked cross walk at, South 76th Street in Milwaukee, Wisconsin.

11. At the same time, Joel J. Stemwell, while in the scope of his employment, with permission was operating a vehicle owned by the United States Postal Service, traveling northbound on 76th Street, attempted to make a right hand turn, onto East Howard Avenue, and struck Plaintiff, Robert Moeller.

12. Joel L. Stemwell was negligent in the operation of the above-described vehicle in that he among other thing, failed to maintain proper lookout, failed to yield the right of way, and was otherwise negligent.

13. That the negligence of Joel L. Stemwell was a cause of injuries and damages sustained by the Plaintiff, Robert Moeller.

14. As a direct and proximate result of Joel L. Stemwell's negligence, Plaintiff, Robert Moeller, has suffered bodily injuries, including, but not limited to closed head trauma, concussion, headaches, bruising to the left temporal area, chest wall contusion, left knee sprain/strain, left hip sprain/strain, cervical sprain/strain and lumbar sprain/strain; incurred medical expenses, experienced pain and suffering and is substantially certain to incur all of these damages in the future.

15. Defendant, United States of America is joined as a Defendant in its capacity as employer of Joel L. Stemwell and is legally responsible for the negligent acts and omissions of its employee, Joel J. Stemwell; and further, that the United States of America negligently entrusted the company vehicle to Joel L. Stemwell and/or failed to properly train Joel L. Stemwell.

JURY DEMAND

16. Plaintiff, Robert Moeller hereby requests a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Robert Moeller, respectfully prays this Court enter judgment against the Defendant, United States of America, the following:

1. On behalf of the Plaintiff, Robert Moeller, for compensatory damages in the amount of \$70,000.00 and costs.

2. With regard to American Family Mutual Insurance Company, S.I., and United Healthcare Insurance Company;

- a. Dismissing their subrogation and/or reimbursement interest in this matter in their entirety;
 - b. In the alternative, if American Family Mutual Insurance Company, S.I. and/or United Healthcare Insurance Company, fail to timely answer and appear, or fail to participate in the prosecution of this action as provided under Wisconsin law, then for dismissal of American Family Mutual Insurance Company, S.I., and/or United Healthcare Insurance Company and extinguishment of those alleged rights and interests in their entirety.
3. For such other and further relief that the court deems just and equitable.

Dated this 1st day of February, 2019.

By: s/ Timothy J. Rymer

Timothy J. Rymer

State Bar No: 1001739

Gendlin, Liverman & Rymer, S.C.

10335 W. Oklahoma Avenue, Ste 300

Milwaukee, WI 53227

Phone (414) 272-3399

Fax (414) 272-6659

Email: trymer@glr-law.com

